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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

GOODRICH CORPORATION, Plaintiff and Appellant, v. CITY OF RIALTO et al., Defendants and Respondents; KEN THOMPSON, INC. et al., Real Parties in Interest and Respondents.	E045057 (Super.Ct.No. CIVSS704343) OPINION

APPEAL from the Superior Court of San Bernardino County. Brian S. McCarville, Judge. Affirmed.

Gibson, Dunn & Crutcher, Jeffrey D. Dintzer and Denise G. Fellers for Plaintiff and Appellant Goodrich Corporation.

Pillsbury Winthrop Shaw Pittman, Scott A. Sommer and Stacey C. Wright for Defendants and Respondents City of Rialto and Rialto City Council.

Varner & Brandt, Keith A. Kelly and Nathan A. Perea for Real Parties in Interest and Respondents Ken Thompson, Inc., Western Precast Products, Inc., and Rialto Concrete Products.

Plaintiff Goodrich Corporation (Goodrich) appeals the judgment and order granting the demurrer to its petition for writ of mandate to compel defendant and respondent City of Rialto (the City) to enforce its own environmental mitigation against real party in Interest and respondent Ken Thompson, Inc. (Thompson). Finding no errors, we affirm.

I. PROCEDURAL BACKGROUND AND FACTS

From approximately 1957 through 1963, Goodrich owned and operated a small research and development rocket production facility on a 160-acre parcel in the City. From 1968 through 1988, Pyrotronics Corporation, a fireworks manufacturer and distributor, operated on the same 160-acre parcel. In 1972, Pyrotronics constructed a "fireworks residual pit" referred to as the "McLaughlin Pit" for the purpose of disposing waste fireworks powder, pyrotechnic composition, defective and off-specification fireworks. After Pyrotronics left, Thompson sought to construct a concrete products manufacturing plant (the Project) in the same area. Pursuant to California Environmental Quality Act (CEQA) (Pub. Res. Code, §§ 21000 et seq.), on or about March 12, 1987, the City

adopted a Mitigated Negative Declaration (MND) for the Project, which permitted Thompson to proceed with its proposed construction of a 15,000 square-foot precast concrete products manufacturing plant (and an equal-sized expansion in the future), as well as a 5,000 square-foot office building and associated facilities. The MND required Thompson to complete a satisfactory cleanup of the McLaughlin Pit and to certify the completion in a report to the City Engineer. The City approved the Project on June 4, 1987, and issued a CEQA Notice of Determination. The grading plan was approved and grading began on July 15, 1987. Thompson allegedly burned any remaining material and filled the McLaughlin Pit in December 1987.

Ten years later, in 1997, perchlorate was reported in several municipal water supply wells in the Rialto/Colton area. The California Regional Water Quality Control Board, Santa Ana Region (the Water Board) acted as lead agency in investigating the contamination and designing and implementing a final remedy. The Water Board issued a number of cleanup and abatement orders. Adjudicatory administrative proceedings at the State Water Quality Control Board began February 2007. The City filed actions against Goodrich and other parties in federal court under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C §§ 9601 et seq. and state law.

On July 31, 2007, Goodrich initiated this action by filing its petition for writ of mandate seeking to compel the City to enforce its 1987 MND against Thompson, which would require Thompson to remediate the perchlorate contamination. Goodrich claimed that it was interested in such an outcome because it may otherwise be found liable for remediation costs in the separate state and federal litigation and administrative proceedings that seek to adjudicate liability for the cost of remediation. On or about September 7, the City demurred to Goodrich's petition. On September 27, Goodrich filed its opposition. On December 6, 2007, the court sustained the demurrer without leave to amend on the grounds that Goodrich lacked standing. That same day, the court entered judgment in favor of the City and dismissed the case with prejudice. Goodrich appeals.

II. STANDING

A. Standard of Review

As noted above, the trial court's ruling that Goodrich lacks standing came in the context of a demurrer to the petition. In evaluating an order sustaining a demurrer to a pleading, we give the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 564.) We assume the truth of all material facts that have been properly pleaded, of material facts that may reasonably be

inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 672; *Mead v. Sanwa Bank of California*, *supra*, at p. 564.) We do not, however, assume the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal.4th 962, 967; *City of Morgan Hill v. Bay Area Air Quality Management Dist*. (2004) 118 Cal.App.4th 861, 869-870.)

A complaint or petition is sufficient if it alleges facts that state a cause of action under any cognizable legal theory. (*Aubry v. Tri-City Hospital Dist.*, *supra*, 2 Cal.4th at p. 967.) However, because it is not a reviewing court's role to construct theories or arguments that would undermine the judgment (*People v. Stanley* (1995) 10 Cal.4th 764, 793), we consider only those theories advanced in the appellant's brief (*Mead v. Sanwa Bank California*, *supra*, 61 Cal.App.4th at p. 564).

Because the factual allegations are assumed to be true, the determination of whether the petition is sufficient—or in this case, whether Goodrich has standing—is purely an issue of law that we decide independently, without deferring to the trial court. (*McCall v. PacifiCare of Cal., Inc*. (2001) 25 Cal.4th 412, 415.)

B. Analysis

According to Goodrich, the trial court erred in sustaining the City's demurrer because Goodrich had proper standing to bring its petition.

Generally, a party has no standing to prosecute a petition for a writ of mandate unless that party is beneficially interested in the subject matter of the action. (*Green v. Obledo* (1981) 29 Cal.3d 126, 144; *Regency Outdoor Advertising, Inc. v. City of West Hollywood* (2007) 153 Cal.App.4th 825, 829; *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1232 (*Waste Management*).) Under some circumstances, however, a citizen without any personal beneficial interest nevertheless has standing to seek judicial enforcement of a public duty. (*Green v. Obledo*, *supra*, 29 Cal.3d at p. 144.)

1. Beneficial Interest

Here, Goodrich sought a writ of mandate pursuant to Code of Civil Procedure section 1085 to compel the City to enforce its 1987 MND against Thompson. Goodrich argues that remediation of the environmental impact of the McLaughlin Pit would "substantially benefit Goodrich," because it is "presently involved in lengthy and extensive litigation and administrative proceedings regarding remediation of the 160-acre site." Goodrich further offers that "[g]ranting the writ would thus have the direct and immediate effect of reducing the risk that Goodrich will be ordered to remediate land which it has not contaminated and assigned legal responsibility for harm it has not caused."

According to Goodrich, while the trial court correctly concluded that Goodrich would benefit from the issuance of the writ, the court "erroneously held

that Goodrich has not alleged an environmental effect it has suffered as a result of [the City's] failure to enforce [the 1987 MND], and that its interests are purely economic." Goodrich argues that its economic interests in the outcome of this case should not detract from its standing because the environmental effects of the City's failure to enforce the 1987 MND now creates a financial burden on Goodrich, which will be forced to clean up and remediate the contamination of the McLaughlin Pit. Goodrich cites *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, pages 81 through 82 (*Cadiz*), and *Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133, 1138 (*Burrtec*).

In *Cadiz*, a company challenged approval of a landfill project in an area within the vicinity of the company's agricultural operations. (*Cadiz, supra,* 83 Cal.App.4th at pp. 80-81.) Specifically, the company claimed the landfill would have adverse impacts on its operations and would contaminate the groundwater (in an aquifer), which it used and which would be sold to the Mojave Water Agency. (*Id*. at pp. 81-82.) Although this court never reached the issue of standing, we concluded that the EIR failed to provide a sufficient description of the environmental setting for the public agencies to evaluate the possible adverse impact which the landfill would have on the groundwater contained in the aquifer. (*Id*. at p. 95.)

In *Burrtec*, this court considered whether a competing solid waste and recycling company had standing to bring a mandate proceeding against a

municipal entity based on alleged violations of CEQA. (*Burrtec*, *supra*, 97 Cal.App.4th at pp. 1136-1137.) We stated, "As a general rule, standing requires a party to have a beneficial interest, a private or particular interest independent of the public at large. But 'where a public right is involved, and the object of the writ of mandate is to procure enforcement of a public duty, the plaintiff is not required to have any legal or special interest in the result; it is sufficient that as a citizen he is interested in having the public duty enforced. [Citation.] Accordingly, in a writ of mandate against a municipal entity based on alleged violations of CEQA, a property owner, taxpayer, or elector who establishes a geographical nexus with the site of the challenged project has standing. [Citations.] Moreover, the geographical nexus can be attenuated . . . because "[e]ffects of environmental abuse are not contained by political lines."'" (*Id.* at p. 1137, fns. omitted.) Noting that Burrtec's interest was "not a commercial one but an issue involving the adequacy of the public notice required by CEQA," (i*d.* at p. 1138) we held that Burrtec had standing to bring a citizen's suit. (*Id.* at p. 1139.)

Goodrich argues that it, like the petitioner in *Burrtec*, is trying to enforce a city's public duty under CEQA, not trying to advance issues of "'rank commercialism'" or to vindicate its own interests. We disagree. Unlike the facts in *Cadiz* and *Burrtec*, here, the facts clearly show that the reason for Goodrich's action is to reduce its liability and/or responsibility for groundwater contamination. Such interest is purely "financial or commercial." (*Waste*

Management, supra, 79 Cal.App.4th at p. 1234.) Furthermore, as the City notes, Goodrich's interest in reducing its exposure to paying for remediation "is not within the zone of interest" which the 1987 MND imposed pursuant to CEQA. CEQA is not a liability-shifting statute. Its primary purpose is to require the consideration of environmental impacts that result from development. (Pub. Res. Code, §§ 21000, 21001.)

2. Citizen Standing

Notwithstanding the above, a party may bring a "citizen's action" where "the plaintiff [is] interested as a citizen in having the laws executed and the public duty enforced." (*Waste Management, supra,* 79 Cal.App.4th at pp. 1236-1237.) According to Goodrich, it can satisfy the requirements of citizen standing. Goodrich claims that (1) it maintains operations in Riverside, close to the City, and at least seven of its employees live in the City; (2) it has shown a long-standing interest and commitment (including contributing millions of dollars) to the cleanup of the McLaughlin Pit; and (3) "the legislative intent of CEQA is better fulfilled by enforcing mitigation and reducing environmental impacts, rather than allowing mitigation to languish unenforced."

The City begins its analysis of the citizen standing of corporations by noting that corporations are not citizens. (*Waste Management, supra,* 79 Cal.App.4th at p. 1237.) Although corporations are persons (Civ. Code, § 14; Gov. Code, § 17; Pub. Res. Code, § 21066), only natural persons are citizens (see

Gov. Code, § 241 [only persons "born" are citizens]). Nevertheless, there are some instances in which a corporation will be treated as a citizen. (*Waste Management, supra*, at p. 1237.) When a corporation attempts to maintain a citizen suit, the corporation has the burden "to demonstrate it should be accorded the attributes of a citizen litigant, since it generally is to be expected that a corporation will act out of a concern for what is expedient for the attainment of corporate purposes [citations], rather than by virtue of the neutrality of citizenship [citations]." (*Id.* at p. 1238.)

Whether that burden is met must be resolved in light of the particular circumstances of each case, "including the strength of the nexus between the artificial entity and human beings and the context in which the dispute arises. [Citations.] Among the factors which may be considered are whether the corporation has demonstrated a continuing interest in or commitment to the subject matter of the public right being asserted [citations]; whether the entity is comprised of or represents individuals who would be beneficially interested in the action [citation]; whether individual persons who are beneficially interested in the action would find it difficult or impossible to seek vindication of their own rights [citations]; and whether prosecution of the action as a citizen's suit by a corporation would conflict with other competing legislative policies [citation]." (*Waste Management, supra*, 79 Cal.App.4th at p. 1238.)

Goodrich contends that it is entitled to citizen standing because it has demonstrated continuing interest in or commitment to the cleanup of the McLaughlin Pit. It is mistaken.

As the company that previously operated on the 160-acre site, Goodrich has, or at least had, an interest (maybe not competitive, but at least financial) in the City's actions regarding the McLaughlin Pit. However, when the 1987 MND was issued, Goodrich remained silent. It wasn't until 20 years later,[1] after the City initiated action against Goodrich for the purpose of cleaning up the McLaughlin Pit, that Goodrich resurrected the 1987 MND and sought to enforce the City's public duty under CEQA. Because Goodrich delayed its attempt to enforce CEQA in this particular instance shows "no demonstrable interest in or commitment to the environmental concerns which are the essence of CEQA; rather, it is pursuing its own economic and competitive interests." (*Waste Management, supra,* 79 Cal.App.4th at p. 1238.)

To establish that it is bringing the action as a citizen rather than as a competitor, Goodrich must allege facts tending to show that it is interested in the enforcement of CEQA requirements even when its competitive or commercial interests are not at stake. Nothing in the allegations of the petition tends to

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[1] At oral argument, counsel for the City noted it had also demurred on the ground that the applicable CEQA statute of limitations precluded this action. Such ground is well taken.

establish that fact. Accordingly, Goodrich failed to allege facts demonstrating "a continuing interest in or commitment to the subject matter of the public right being asserted . . . ." (*Waste Management, supra*, 79 Cal.App.4th at p. 1238.) Goodrich's reliance on *Burrtec* is misplaced. The question in *Burrtec* was whether as "a taxpayer and a property owner that has established a geographical nexus," Burrtec should be otherwise disqualified because it was a commercial competitor. (*Burrtec, supra*, 97 Cal.App.4th at pp. 1138.) Goodrich is not even able to establish itself as a taxpayer, property owner, or having a geographical nexus.[2]

For the above reasons, Goodrich failed to establish citizen standing and thus the judgment cannot be overruled on that basis.[3]

III. ADEQUATE REMEDY AT LAW

Notwithstanding the above, Goodrich contends the trial court "erroneously concluded, in dicta, that '[e]ven if . . . [Goodrich] did have a [*sic*] standing[,] . . . [it] clearly has an adequate remedy at law.'" The trial court found that Goodrich's

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[2] The court has reconsidered Goodrich's request filed October 22, 2009, for judicial notice of the United States Environmental Protection Agency's listing of the 160-acre parcel at issue in this appeal, as the National Priorities List as the B.F. Goodrich Site. The request is denied.

[3] Although the City raises other grounds to support the trial court's decision to sustain the demurrer without leave to amend, we need not discuss them because we have found the ones challenged by Goodrich sufficient.

interest can be protected by a money judgment. However, Goodrich contends that such finding ignores its pleadings. Specifically, Goodrich argues that the instant action does not seek money damages. Rather, it seeks to compel the City to enforce its 1987 MND and have Thompson clean up the McLaughlin Pit. In support of its argument, Goodrich cites *Morris v. Harper* (2001) 94 Cal.App.4th 52, 58 (*Morris*).

In *Morris*, a doctor filed a writ of mandate to compel the director of the California Youth Authority (CYA) to comply with the state law by obtaining licenses for the CYA programs which met the statutory definition of a correctional treatment center. (*Morris*, *supra*, 94 Cal.App.4th at pp. 55-56.) The court noted that, in general, "mandamus may only be employed to compel the performance of a duty that is purely ministerial in character. [Citation.]" (*Id*. at p. 62.) Thus, "although mandamus is not available to compel the exercise of the discretion in a particular manner or to reach a particular result, it does lie to command the exercise of discretion—to compel some action upon the subject involved under a proper interpretation of the applicable law. [Citations.]" (*Id*. at p. 63.) Here, Goodrich argues that the court needs to compel the City to enforce mitigation against Thompson.

Goodrich's reliance on *Morris* is misplaced. Furthermore, its claim that it "seeks only to compel [the City] to follow the law" lacks merit. As Goodrich notes, the 1987 MND provided that "[p]rior to any grading, . . . the applicant shall

have completed a satisfactory cleanup of the fireworks residual pit . . . and shall have certified the satisfactory completion of that program in a report to the City Engineer. As part of that cleanup program, the applicant shall obtain all necessary permits or approvals from local, state, and/or federal agencies as required." Clearly, under the facts of this case, the City did exercise its discretion when it approved the Project on June 4, 1987, and approved the grading plan so that grading could begin on July 15, 1987. In order to obtain such approval, Thompson necessarily had to complete a satisfactory cleanup. The fact that perchlorate began to show up in several municipal water supply wells in the City's area in 1997, does not mean the City did not exercise its discretion and determine that the cleanup was satisfactory. Hindsight is 20-20 vision.

Also, as the City points out, Goodrich has failed to explain why it cannot obtain adequate relief via the pending litigation and administrative proceedings, or via pursuit of contribution remedies under CERCLA. The record contains Goodrich's cross-complaint in the federal court case wherein Goodrich seeks declaratory relief, equitable indemnification, and claims under CERCLA, sections 107 and 113.[4] The City thus argues that, given the other equitable or legal

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[4] On April 16, 2009, Goodrich asked us to take judicial notice of filings in other related litigation. On May 5, the City opposed Goodrich's request, but argued that if this court granted the request, we should also take judicial notice of filings in other related litigation. On May 8, we reserved ruling for consideration with the appeal. We now grant both requests for judicial notice. (Evid. Code, §§ 452, 459.) As shown by the documents, Goodrich's claims remain viable.

remedies available to Goodrich, the trial court correctly determined that a writ of mandate must not issue. (Code Civ. Proc., § 1086 [writ must be issued "where there is not a plain, speedy, and adequate remedy, in the ordinary course of law"]; *Moran v. Department of Motor Vehicles* (2006) 139 Cal.App.4th 688, 693 [writ could not issue where petitioner failed to demonstrate legal remedies are inadequate].) We agree. The trial court correctly concluded that Goodrich had an adequate remedy at law.

IV. DENIAL OF LEAVE TO AMEND THE PETITION

Alternatively, Goodrich argues that even if the court properly granted the City's demurrer, it should have allowed Goodrich to amend its petition. Goodrich claims it could add the allegations that (1)it has ongoing operations in Riverside, which is close to the City; (2) seven of its employees live in the City; and (3) it has actively and continually investigated and remediated the contamination of the 160-acre site, including contributing $4 million to the City and others for wellhead treatment of perchlorate contamination in the City.

A. Standard of Review

When a demurrer "is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse. [Citation.]" (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.)

B. Analysis

Goodrich submits that the additional facts listed above can cure its complaint so that it can withstand demurrer on the grounds of lack of standing. The City argues that Goodrich's ongoing operations in a town nearby are meaningless because there is no allegation that the perchlorate has reached to the site of Goodrich's operations. The City also contends that regardless of the number of Goodrich's employees who live in the City, the fact remains the motivation of Goodrich's action is to avoid being held responsible for the costs associated with remediating the McLaughlin Pit. And finally, Goodrich's payment of $4 million to the City and others for wellhead treatment of perchlorate contamination in the City, "likewise goes to cost and contribution, not a direct interest in the *environment* as required under CEQA." Thus, the City argues that Goodrich's proposed amendments are insufficient to provide leave to amend.

We agree with the City and the trial court. Like the trial court, we conclude that Goodrich's interest "is purely economic. . . . [It] has not alleged an environmental effect it has suffered as a result of [the City's] failure to enforce [a] mitigation measure. [Goodrich's] interest in protecting the environment is no different from that of any other person, less at bench because [Goodrich] is not even located within the city and has not maintained a presence in the city for in excess of forty years. The economic interest of [Goodrich] is over and above that held by the public in general but its environmental interest is not."

V. DISPOSITION

The judgment is affirmed. The City is entitled to its costs on appeal.

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HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

GAUT
J.